

Bennett v. Barnhart, No. 01-57251

MAR 11 2003

O'SCANNLAIN, Circuit Judge, dissenting.

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U.S. COURT OF APPEALS

I must respectfully dissent from the decision to reverse the district court and to award disability benefits. The Commissioner's decision to deny benefits may be overturned "only if it is not supported by substantial evidence." *Morgan v. Apfel*, 169 F.3d 595, 599 (9th Cir. 1999). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a decision." *Id.* Where the evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld. *Id.*; *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

In this case, the ALJ found that Bennett had failed to meet her burden of showing that she was disabled by her neck and shoulder pain. Specifically, the ALJ rejected the opinion of Bennett's treating physician, Dr. Schaffer. The majority is correct to note that such an opinion can be rejected only for "'clear and convincing' reasons supported by substantial evidence in the record." *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001) (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)). I must part ways with the majority, however, with respect to its conclusion that the ALJ failed to provide such reasons in this case. For, in rejecting Dr. Schafer's opinion, the ALJ noted that, at bottom, the opinion was premised on subjectively controlled motion testing rather than "medically

acceptable clinical and laboratory diagnostic techniques.” Social Security Ruling 96-2p. We have elsewhere held that, where a medical opinion is premised upon the patient’s “own subjective complaints,” the absence of an independent, objective basis for the opinion itself “constitutes a specific, legitimate reason for rejecting the opinion of a treating physician.” *Fair v. Bowen*, 885 F.2d 597, 605 (9th Cir. 1989).

The majority’s critique of the other reasons relied upon by the ALJ becomes decidedly less persuasive when stripped of the imprimatur of medical authority. Indeed, the ALJ’s credibility determination – that is, that Bennett’s testimony regarding her neck pain was not believable in light of the activities she admittedly engaged in – takes on added weight: For if the ALJ found Bennett’s testimony not worthy of credence, it had all the more reason to reject Dr. Schaeffer’s conclusions, themselves based entirely upon subjective input from Bennett.

At best the majority has demonstrated that the evidence in this case is susceptible to more than one rational interpretation. Such a demonstration is insufficient, however, to reverse the ALJ’s conclusion. *Andrews*, 53 F.3d at 1041. Accordingly, I respectfully dissent.